



UNHCR Observations on Proposed Draft Law 187 -XII  
revising and amending Law no. 27/2008 dated 30 June 2008  
and transposing into Portuguese legislation EU Directives  
2011/95 (Qualification), 2013/32 (Procedures), 2013/33  
(Reception) and Regulations on Dublin and EURODAC

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UNHCR Regional Office in Rome

[www.unhcr.it](http://www.unhcr.it) / [www.unhcr.org](http://www.unhcr.org)

## **Introduction**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the initiative by the Minister of Internal Affairs to review and amend the Law no. 27/2008 dated 30 June through the proposed Draft Law 187 - XII including the transposition of European Union Asylum law instruments (recast) into Portuguese legislation. UNHCR welcomes the opportunity extended by the Portuguese Parliament's Commission for Constitutional Affairs, Rights, Liberties and Guaranties to offer its views on the revised proposed Draft Law.

2. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees. As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."

3. In submitting these observations, UNHCR also refers to the excellent and comprehensive comments by the Portuguese Refugee Council (CPR) and, in light of short time frame for preparing comments, would welcome to have the possibility to be able to present its views at an oral hearing at the relevant Parliamentary Commission and to elaborate further on its comments.

## **Observations and comments**

### **I. Refugee definition and subsidiary protection**

4. UNHCR welcomes the restatement of the complementary nature of subsidiary protection in relation to asylum, as well as the clarification of concepts such as the internal flight alternative, agents of protection and exception to cessation due to compelling reasons arising from past persecution.

### **II. Reception conditions**

5. UNHCR welcomes the extended residence rights for admitted asylum seekers and beneficiaries of subsidiary protection from now two years to new three years.

### **III. Procedural Issues**

6. UNHCR would also like to commend the extended deadlines for admissibility procedures and appeal procedures at border points and in national territory. The extension from 5 days to 7 days for a decision by the National Director of the Portuguese Immigration Service (Art. 24/4) is most welcomed. While it welcomes the extended deadline of 4 days (from previously 2 days) to file an appeal for applications lodged at border points, UNHCR is concerned that the right to an

effective remedy remains not fully ensured since even 4 days are not an adequate timeframe to prepare an appeal especially since access to legal counselling is not guaranteed at the international part of the airport/seaport in the same way as foreseen under the regular procedure as outlined in Art. 13/3.

*UNHCR proposes to extend the deadline to present an appeal to 7 working days and suggests building in the same procedural guarantees for applicants of international protection with applications lodged at border posts as the one outlined in Art. 13/3 including a strengthened access to legal counselling at the airport.*

7. With regard to the admissibility procedure, UNHCR regrets that the proposed legislation expands the list of inadmissibility clauses foreseen in article 33 of the Procedures Directive, amongst other through Art. 19/1 I. In UNHCR's view, some of the inadmissibility reasons would only justify an accelerated procedure. If passed, the new law may prevent a full assessment of the merits of certain claims made by various categories of asylum-seekers in Portugal and ultimately lead to cases of *refoulement*.

*Instead, UNHCR proposes that the Asylum Law clearly distinguish reasons for inadmissibility and for accelerated procedures and limit the reasons for inadmissibility decisions to.*

#### IV. Detention

8. UNHCR regrets that the current draft law maintains mandatory detention at border facilities ("placed or maintained in temporary installation centre based on an individual assessment" (Art. 35 A/2). UNHCR is particularly concerned that it also applies to minors. There is a considerable risk that detention becomes a rule and not the exception. In addition, the article states a shorter processing time and guarantees fewer procedural safeguards. UNHCR believes that there is no valid justification for restrictions in the requirements of due process of law for asylum cases submitted at the border.

*UNHCR promotes in general that asylum-seekers should not be detained. In case the necessity of detention is established and authorised by law, legislation should enumerate the legitimate grounds. In this case it is important that due consideration of alternatives to detention, such as open centres, reporting or residency requirements, release on bail, etc. are considered and persons with special needs are exempted and as well as unaccompanied and separated children.*

#### V. Status rights

9. UNHCR welcome the approximation of the rights of beneficiaries of refugee status and subsidiary protection and the particular attention given to the rights of unaccompanied children.

## VI. UNHCR's supervisory responsibility

10. UNHCR welcomes that the draft law foresees a role for UNCHR/CPR in the asylum procedure including the right to be informed at all stages of procedure, access to all asylum seekers and right to intervene under Article 35 of 1951 Geneva Convention, upon agreement of the asylum seeker. While the law no longer explicitly refers to the CPR, UNHCR welcomes that the law maintains, in line with Article 29 (2) of the Asylum Procedures Directive, that Portugal extends its cooperation with UNHCR in the exercise of its responsibility to supervise the 1951 Convention to the organisation with which UNHCR is working in Portugal. Indeed, the CPR is UNHCR's fully trusted Implementing Partner (IP) in Portugal since over 15 years, and therefore UNHCR envisages no reason why CPR's role should not be clearly stated in the Law, as in previous Asylum Acts, 15/98 and 27/2008.